APPENDIX.

Common Law Rule 5 of the United States District Court for the Southern District of New York provides as follows:

> "In Common Law causes the parties shall be entitled to the same rights and remedies as respects attachments against the property of the defendant, and as respects, proceedings supplementary to execution, as are now or may be hereafter provided by the laws of the State of New York, which laws (in respect of Common Law causes) are hereby adopted."

The applicable sections of **Article 45 of the New York Civil Practice Act,** entitled "Proceedings Supplementary to Judgment" (Sections 773 through 810), are as follows:

> "§ 773. IN WHAT CASES JUDGMENT CREDITOR MAY MAINTAIN PROCEEDINGS. To entitle a judgment creditor to maintain a special proceeding authorized by this article, the judgment must have been rendered in any sum by any court of this state, whether or not of record. A decree or order awarding the payment of money shall be deemed a judgment for the purpose of this article. A proceeding may be maintained until such judgment is satisfied, vacated or barred by the statute of limitations. [Added by L. 1935, ch. 630, in effect Sept. 1.]"

> "§ 774. HOW PROCEEDINGS MAY BE INSTITUTED. Proceedings under this article may be instituted:
>
> 1. By order of the court.
> 2. By subpoena of the judgment creditor's at-

torney, served upon the judgment debtor, a third party or a witness.

3. By warrant issued as in this article provided.

Such order or subpoena shall require the attendance of the judgment debtor or third party or witness, to whom it is directed, to appear for examination at a time and place to be specified therein, concerning the property of the judgment debtor. Examinations of the debtor, third party and witnesses may be had simultaneously or separately, and the close of one or more of such examinations shall not affect the proceedings not concluded. [Added by L. 1935, ch. 630, in effect Sept. 1.]"

"§ 783. MANNER OF SERVICE OF ORDERS, SUBPOENAS AND WARRANTS.

1. An injunction order, or an order or a subpoena requiring a person to attend and be examined, made as prescribed in this article, must be served by delivering to and leaving with the person named therein, a copy thereof, together with a copy of the affidavit, if any, upon which such order was granted. Service upon a corporation is sufficient if made in the same manner as a summons may be served upon such corporation unless the officer or agent is specifically designated in the subpoena or order, in which case service shall be made upon him. * * *

2. * * * [Added by L. 1935, ch. 630, in effect Sept. 1.]"

"§802. DURATION AND ADJOURNMENT, DISCONTINUANCE DISMISSAL, OR CLOSING OF PROCEEDINGS.

1. A proceeding under this article shall continue until closed or discontinued by consent or

discontinued, dismissed or closed by order of the court; but a proceeding shall be deemed closed two years from the service of the order, subpoena, or warrant whereby the proceeding is instituted unless the court shall make an order extending the proceeding for a definite period. A proceeding shall not be deemed closed or abandoned by reason of any irregularity upon an adjournment. Any proceeding may be adjourned from time to time by consent or by the court or referee as it or he may deem proper. Where an adjournment has been had without date, the court or referee may fix a date for the continuation of the said examination of the debtor, third person or witness.

2. A proceeding hereunder upon application of the creditor may be discontinued at any time. A proceeding under this article shall be deemed dismissed or closed upon the satisfaction or vacation of the judgment and an order may be entered thereon.

3. A proceeding under this article may be closed by order of the court where the judgment creditor unreasonably neglects or delays to proceed, upon the application of the judgment debtor or third person, or of the plaintiff in a judgment creditor's action against the debtor. The court or referee shall close a proceeding, under this article upon the completion of the examination of the debtor, or of any third person, and of the witnesses.

4. The court may impose costs as provided in section eight hundred and three of this article." (Added by L. 1935, ch. 630, in effect Sept. 1.)

The sections applicable to the service of process in this proceeding are found in the **New York Civil Practice Act** (L. 1920, Ch. 925), as follows:

> "§ 218. SUMMONS GENERALLY. A civil action is commenced by the service of a summons, which is a mandate of the court. Rules may be made respecting the requisites and form of a summons and notice and endorsements thereon."

> "§ 225. PERSONAL SERVICE OF SUMMONS UPON A NATURAL PERSON. Personal service of the summons upon a defendant being a natural person must be made by delivering a copy thereof within the state as follows:

> 1. * * *

> 2. * * *

> 3. In any other case, to the defendant in person."

> "§ 403. ISSUANCE OF SUBPOENA. A subpoena is a process in the name of the court, referee, body or other person authorized by law to issue the same, requiring the attendance of a witness at the trial or hearing of a cause or the hearing of a motion or before a referee or other person where proof or the production of books, papers or other documents is required."

A special proceeding is defined in the **New York General Construction Law** (Cons. Laws, Ch. 22, 1909, as amended by L. 1920, Ch. 917) as follows:

> "§ 46-a. SPECIAL PROCEEDING. Every prosecution by a party against another party in a court of justice which is not an action is a special proceeding."

The **New York Rules of Civil Practice** (adopted pursuant to L. 1920, Ch. 902, as amended by L. 1921, Ch. 370) applicable in this proceeding reads:

> "Rule 21. MANNER OF SERVICE OF PAPERS TO BEGIN A PROCEEDING. The provisions of the statutes and rules relating to the mode of personal service of a summons shall apply to the service of any process or other paper whereby a proceeding is begun in a court, or before an officer, except a proceeding to punish for contempt, unless other special provision for the service thereof is made by law or rule. Other papers in a proceeding shall be served in like manner as in an action."